

Exhibit AA

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**STEPHANIE CAPSOLAS, HERNAN RICARDO
ALVARADO, JEFFREY CUTAIAR, NICOLE
MEDVITZ, PAUL TORO, DANIEL JANSON,
ROGER CARO, CHRIS ELL, CHRIS FORBES,
JESSE PATRICK, and DIANA DIETRICH, on behalf
of themselves and other similarly situated,**

Plaintiffs,

v.

**PASTA RESOURCES INC., BABBO LLC d/b/a
BABBO RISTORANTE ENOTECA, PANE SARDO
LLC d/b/a OTTO ENOTECA PIZZERIA, EL MONO
LLC d/b/a CASA MONO and BAR JAMON, LA
LOGGIA LLC d/b/a TARRY LODGE, MARIO
BATALI, and JOSEPH BASTIANICH,**

Defendants.

**DECLARATION OF
STEPHANIE CAPSOLAS**

I, Stephanie Capsolas, declare, upon personal knowledge and under penalty of perjury, pursuant to 28 U.S.C. Section 1746, that the following is true and correct:

1. I have worked for Babbo as a server from approximately October 2007 through the present.

2. During my entire tenure at Babbo, I was paid hourly wages of less than the full minimum wage rate.

NOTICE OF THE TIP CREDIT

3. Throughout my employment, nobody at Babbo ever informed me about the federal law regarding the tip credit at any time during my employment. Nobody at Babbo ever told me that I would be paid less than the minimum wage because I would receive tips or that my tips would be used as a credit against the minimum wage that Babbo was required to pay me.

TIP SHARING

4. During my employment at Babbo, I was not allowed to retain all of the tips that I earned.

5. The restaurant kept a portion of the customer tips that I and other tipped food service workers earned. Specifically, each night the restaurant required all service employees to pool their tips.

6. After creating the tip-pool, the restaurant calculated 4.5% of the wine sales at the restaurant that night and took that percentage out of the tip-pool. The remainder was distributed between other employees at Babbo, including waiters, runners and busser. I have attached a copy of a tip-pool sheet reflecting this deduction as Exhibit A.

7. I was informed by several sommeliers that they were paid a fixed salary each week, regardless of the restaurant's wine sales. The sommeliers did not receive any of the tips retained by the restaurant.

MANAGEMENT RESPONSE TO THE LAWSUIT

8. Approximately a week after this lawsuit was filed, Mr. Bastaianich held a meeting at Babbo. Mr. Bastianich discouraged all employees from joining the lawsuit, stating in substance that "only the lawyers make money on these lawsuits," and that if employees joined the lawsuit "it won't serve to benefit [them]." Mr. Bastianich also stated at the meeting that he would "fight" his employees bringing this lawsuit.

9. Since this lawsuit was filed, Defendants have retaliated against me. Specifically, Travis Benvenuti, manager, changed my schedule without notice. Until that point, I had agreed with Babbo that I could receive Monday, Tuesday, and Wednesday, and I was on-call on Sundays. The reason for this arrangement was that I have another job, and this accommodation

allowed to work both jobs. Thus, Mr. Benvenuti's sudden change of my schedule threatened my ability to continue working at Babbo.

10. On two occasions since Mr. Bastianich gave his speech at Babbo about the lawsuit, I have found the word "Rat" written on my locker at work. I have attached photographs of this as exhibit B.

Dated: New York, New York
September 30, 2010


Stephanie Capsolas

Day 7/10 Date 7/26 Number of Cuts 16 Prepared by Adrian/Boege

Waiter	Charge Tips	Cash Tips
Marla	379.84	70
MARK	356.48	141.-
ENRICO	613.10	130.-
KEN L.	419.00	201
Adrian	1070.78	
George	682.58	\$11
Bartenders	Charge Tips	Cash Tips
Tereza	367.77	\$190
Amanda		
Total Charge Tips =	3889.55	
Grand Total (cash + charge)	4632.55	Total Cash Tips = 743

Maitre d' 4% of Total Tips: \$185.30

Sommelier: total wine sales \$5,569.- x 4.5% = \$250.60 Somm. #1 Alec #2 Scott

Total of charge tip out: \$435.90

Charge tips 3889.55 minus charge tip out = \$3453.65 Adjusted Charge Tips

Adjusted Charge Tips divided by # of cuts 16 = 215.85 One Charge Tip Cut

Cash tips 743 divided by # of cuts 16 = \$46.43 One Cash Tip Cut

Waiter	Charge Tip	Cash Tip
Adrian	215.85	46
Enrico		
Marla		
Mark		
George L.		
Ken L.		
Amanda		
Tereza		
Runners/Floater		
Jesus		
Abi	161.88	34
Cesar		
Alex		
Back Waiters		
Rolando		
Jonathan	107.92	23
Maximo		
Roman		
Marco		
George C.		
Araceli		
Stocker		
Claudio		
Coffee		
Hernan		

